UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, **Plaintiff,** **VS.** **HEMZA MENADE LEFSIH,** **Defendant.**	**DOCKET NO. 5:16-cr-00004-BO**

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE KIMBERLY SWANK
THURSDAY, JANUARY 7, 2016; 11:25 A.M.
GREENVILLE, NORTH CAROLINA

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P R O C E E D I N G S

THE COURT: All right, Madam Clerk. If you'll call the next matter for hearing?

THE COURTROOM DEPUTY: Now calling for detention hearing United States versus Hemza Lefsih, Case No. 5:16-CR-4-1BO.

THE COURT: Good morning, sir.

Good morning, Counsel.

MR. GOULIAN: Good morning, Your Honor.

MS. DOMINGUEZ: Good morning.

THE COURT: We are here, sir, for a detention hearing in your case. The purpose of that hearing is to determine whether there is any condition or combination of conditions that can be imposed to reasonably assure that you would not be a flight risk, that you'd appear for all future court proceedings in your case, that you would not be a danger to any person or to the community, in general, if you were to be released prior to your trial..

Now my understanding, Mr. Goulian, is that this is not a presumption case.

MR. GOULIAN: Correct, Your Honor.

THE COURT: All right.

Now, sir, in order to sustain the -- this is the Government's motion to detain you pending your trial and, and in order for the Government to sustain its burden if, on this detention issue it must show by a preponderance of the evidence that you present an actual risk of flight and that there are no conditions of release that would -- yes. I'm sorry. Let me repeat that. I'm getting confused now, myself.

The Government must show either by a preponderance of the evidence that you present an actual risk of flight and that there are no conditions of release that would reasonably assure your presence in court, or they can show by clear and convincing evidence that you are a danger to another person or to the community, in general.

Now are the parties prepared to proceed with regard to a hearing in this matter today?

MR. GOULIAN: Yes, Your Honor.

THE COURT: All right.

MS. DOMINGUEZ: Yes, Your Honor.

THE COURT: All right.

Then, Mr. Goulian, the, the court is with you.

MR. GOULIAN: Thank you, Your Honor.

The Government calls Agent Tony Bell.

THE COURTROOM DEPUTY: State your name for the record.

MR. BELL: Tony Bell.

THE COURTROOM DEPUTY: Spell your --

MR. BELL: B-E-L-L.

TONY BELL, GOVERNMENT'S WITNESS, SWORN

THE COURTROOM DEPUTY: Take the stand and speak into the microphone, please.

THE COURTROOM DEPUTY: Ms. Dominguez, pull that mike towards you, please.

DIRECT EXAMINATION

BY MR. GOULIAN:

Q How are you employed?

A I'm employed as a special agent with Homeland Security Investigations in Raleigh, North Carolina.

Q And you also are a Task Force agent with the FBI, is that correct?

A Yes, sir. I'm also assigned to the Joint Terrorism Task Force in Raleigh, North Carolina with the FBI.

Q And you were previously an agent with the State Department, is that correct?

A Yes, sir. I used to be a special agent with the U. S. Diplomatic Security Service.

Q And you're one of the agents assigned to the investigation of Mr. Lefsih?

A Yes, sir.

Q Now this investigation began with a tip that the FBI received in early December regarding a video that Mr. Lefsih had posted on his Facebook page, is that correct?

A Yes, sir.

Q Could you describe the, the video in question?

A The, the video was a -- a handheld -- it appeared to be a video that was taken off of a cell phone. The video was approximately less than one minute long. The video was of an individual by the name of Sheikh Yusuf Al Qaradawi. Sheikh Yusuf Al Qaradawi is the spiritual and, spiritual leader for the Muslim Brotherhood. The person off side, outside the camera asked the Sheikh -- he starts the video with, by identifying, by identifying the Sheikh and then he asks, "Are you authorizing us," or, "Did you authorize us to commit jihad in Syria?" Sheikh Al Qaradawi answers, "Yes. And I see jihad right now is an obligation to whoever is capable of it and anyone who is capable of doing anything that is beneficial for the mujahedeen in there, such as military service, will be beneficial for people. That person has to go there. In there, Iran is fighting us. Hezbollah and Shias are fighting us and Russia is fighting us. And all the international powers are fighting us. We have to do as much as we can."

Q And did you obtain any additional information about Sheikh Qaradawi?

A I conducted law enforcement record checks and open source record checks and determined that there's an Interpol red notice for Sheikh Al Qaradawi for terrorism threats and Sheikh Al Qaradawi is currently banned from, will be banned from entering the United States based on --

Q And the, the international arrest warrant was issued by what country?

A By Egypt.
Q So what did, what did you when you received this information about Mr. Lefsih?
A I was asked to determine the alienage and deport of, the alienage and naturalization, you know, what, what his immigration status was and to determine, just see if I could look through our immigration databases for additional information.

While conducting our, our initial inquiries into Mr. Lefsih, we determined that -- we -- I identified that Mr. Lefsih had entered the United States on November 19, 2010 as a, as a immigrant, as a, on a diversity visa from, that he had obtained in Paris, that Mr. Lefsih is a citizen of Algeria, and that he had recently applied for his naturalization here in the United States.
Q Okay. What, what is a diversity visa?
A A diversity is a, is an immigrant visa that is issued to certain -- that is -- that allows certain countries to, citizens from certain countries to apply to immigrate to the United States based on a low number of traditional people immigrating from that particular country.

So it's, it's different from other type, like other visas such as a tourist visa or a student visa where they come for a short period of time and then leave.

But Mr. Lefsih was able to obtain that from Paris based on his Algerian citizenship.

Q And then after he entered the United States he then had permanent resident status, is that correct?

A Yes, sir.

Q And you said he had applied for naturalization?

A Yes, sir. On a -- as a diversity visa, coming in on that type of a visa, you have to remain here in the United States for, for five years as a legal permanent resident and at five years you're then allowed to apply for your U. S. citizenship.

Mr. Lefsih had applied for his citizenship on September 1, 2015 and, and conducted his -- and was -- and had his, his N-400 interview at the USCIS office in, in Durham, North Carolina on November 30th, which would have been after his, immediately after his five-year period of being here in the United States as a legal permanent resident.

Q At -- and at that point had Mr. Lefsih obtained United States citizenship --

A No, sir.

Q -- at that point?

A No, sir. He, he had the interview on November 30, 2015 and I was conducting our database and record checks for him on December 1, 2015.

Q The very next day?

A The very next day.

I requested his file and was then notified that -- that he -- you know, by requesting his file for review, I was notified that the USCIS office had his file and that they had just interviewed him.

Q So you referred to the N-400. That's the form that someone fills out when they're applying for naturalization?

A Yes, sir.

Q Okay. And you, you reviewed Mr. Lefsih's N-400?

A Yes, sir. I, I obtained his alien file and reviewed his file and reviewed his N-400 that he had, he had just been interviewed on.

While reviewing his N-400, there's a section under Good Moral Character. And, and in that section it asks about your criminal history. There's approximately five questions where it specifically asks about whether you have ever committed a crime, have you been charged with a crime, charged with citations, or arrested or detained by law enforcement. It asks the same, asks a series of questions in, in different ways to elicit an answer and then in all of those questions Mr. Lefsih answered, no.

Q And could, could you read verbatim to the Court the question regarding having been arrested or cited?

A This is from the criminal complaint. Question No. 23 of the N-400:

"Have you ever been arrested, cited, or detained by any law enforcement officer," in quotation marks, "including any and all immigration officers or the U. S. Armed Forces," end of quotation marks, "for any reason?" And Mr. Lefsih answered, no.

Q And he signed the application under penalty of perjury?

A Yes, sir.

Q And then those questions, or some of the questions on the form are reviewed during the naturalization interview?

A Yes, sir.

Q And does the file indicate whether that particular question was repeated or asked of him during the naturalization interview?

A Yes, sir. As part of the, the normal application, the procedures for an adjudicator, they use the same practice. They're, they're trained to use the same practice every time when they conduct an, when they conduct an interview. They use a red pen and any time they have to make any notations or corrections on an application as a result of the interview with the actual applicant, then they'll make those notations on the, on the form. And then, specifically, when they're asking a question they specifically check off the questions that they ask the applicant with, using a red pen so that they can refer back to that later.

Q And was an indication in red on that question on the form --

A Yes.

Q -- the one asking about having been arrested or cited or detained?
A Yes, sir.
Q And did it indicate what Mr. Lefsih's response was to that question during the naturalization interview?
A He answered no, again.
Q And then was he asked to sign the N-400 again during the interview?
A Yes, sir.
So he -- the applicant signs the, the application under penalty of perjury prior to submitting the application and, and then again when the, during the interview, at the end of the interview process the applicant signs it and the adjudicator signs it. Again, it's under penalty of perjury.
Q Did you determine that Mr. Lefsih's response to that question was, in fact, false?
A Yes, sir. I, I had reviewed his criminal history prior to looking at his N-400 and determined that Mr. Lefsih had numerous traffic citations and violations and -- and -- and at least eight different violations and at least three of those violations were misdemeanor convictions.
Q All right.
Now you, you testified previously about the video that, of Sheikh Qaradawi that Mr. Lefsih had posted on his Facebook page.

The information that was provided to the FBI about that, that video, did that information also indicate when it had been posted or when it had been, or whether it was still on his Facebook page?

A Yes, sir. The original tip that had come into the FBI stated that Mr. Lefsih had posted this particular video on his Facebook page a couple of days prior to the Paris attacks in November. Approximately November 11, 2015, he -- he -- he posted this to his Facebook and then immediately the terrorist attacks happened on November 13th and on the following day, November 14th, it stated that he removed this particular video and other radical Islamic-type postings from his, from his Facebook page.

Q Now was an attempt made to interview Mr. Lefsih?

A Yes, sir. The, the FBI agent that originally received this tip requested that the, the North Carolina State University Police Department, a detective with the police department, contact Mr. Lefsih and request that he come to their office for an interview. Mr. Lefsih stated that he, he told the detective that he wasn't going to talk, you know, he said that he wasn't going to come to their office and that he wouldn't talk to the police without, without a lawyer present, to my knowledge.

So the following day, myself -- this is Tuesday, December 8 -- myself, the FBI agent, and another Task Force office went to Mr. Lefsih's apartment approximately 9:00 in the morning and,

and I knocked on his door, I identified who I was, and I told him that I wanted to talk to him about his immigration application and that -- that -- that there was some discrepancies with his application.

I had -- I provided Mr. Lefsih a Statement of Rights because Mr. Lefsih had already, you know, previously had, had made concerns about his, you know, had made a statement, not to me, but had made it over the phone to another officer that he wanted to speak with a lawyer. I gave, I provided him with a copy of his rights. I made sure that he understood how to speak English and understood that he -- he -- he understood his rights. Mr. Lefsih said he did understand his rights and he agreed to talk with me, but he refused to sign the form.

So at that time we, we reviewed his immigration history. I talked to him about his previous history prior to coming to the, coming to the United States, and I talked to him then and then began reviewing the N-400 application with Mr. Lefsih.

Q Okay. Could you summarize your interview as it proceeded at that point?

A We, we reviewed from the beginning of the, of the application, talking about his basic biographical history, talked about his education. Mr. Lefsih stated that he had a, a master's degree in physics that he obtained in Paris prior to, prior to obtaining a, the device, the -- excuse me -- the diversity visa. Mr. Lefsih stated that after he entered the

United States he lived for a short period of time in, in New York for a couple of months and then moved to Raleigh, North Carolina where he became a taxi driver. He stated that he has been a taxi driver since he, arriving here, approximately February-March of 2011 up until the, up until the time we encountered him.

Mr. Lefsih stated that beginning, probably, in January of 2013 he began taking classes at Wake Tech University and basic classes at Wake Tech. I asked him if he took English as a second language as, if that's why he was going to Wake Tech, and he stated, no, that he spoke English well enough that he didn't have to do that. And, and I asked him -- I didn't understand why a person with a master's degree was coming to the United States and then going to a community college to take remedial classes. Mr. Lefsih didn't really have an answer for that. He just, you know, he later stated that he was working on a bachelor's degree in chemical engineering at NC State and that, you know, it was, it was easier for him to go to school as a, as an undergraduate and get better financial aid than it would be for him to go to school and continuing on with his, his other degree. Again, I didn't understand that. That didn't -- that doesn't, doesn't exactly sound right. I asked Mr. Lefsih, typically individuals that come to the United -- typically, individuals that have higher education outside of the United States transfer, typically come to the United States to continue their education and he just stated that he didn't, he didn't apply to come to the United States to work on his doctorate degree. He applied to enter the United States on this diversity visa, was the only time that he had, he had applied to do that. We --

Q Did -- did you -- this interview took place at his apartment, correct?

A Yes, sir.

Q Did you ask him if he had any roommates?

A We did. When we first, when we first came to his apartment we asked him if he, if he had any roommates, if he was living -- and he stated that he did not.

Q Was there any, was there anything else you were going to add to what you just summarized about the interview?

A We continued on with his, with the interview and we reviewed the Good Moral Character questions.

In the N-400, there's, there's different sections within the N-400. The section of Good Moral Character, there's a series of questions in that determining, one of those being have, you know, talking about any, any prior criminal history, any, things like criminal history and it gives them an opportunity to provide that information.

There's also a section in there where it's asking the individual, the applicant, if he's associated with any other types of organizations or any other parties. We began -- at that point we reviewed all of those questions with Mr. Lefsih, all of -- there was approximately five questions under the Crime section, criminal history part. I reviewed all those questions with him. He answered, again he answered, no. At that time I went back and I asked him Question No. 10 on the application, which, basically, it asks, Are you affiliated with any other, any other parties or organizations? And there's a -- it's a three-part question, one of them being the Nazi Party, one of them being the Communist Party, and one of them being a terrorist organization. And he said, no.

I went back at that time and showed Mr. Lefsih his criminal history and reviewed the criminal history with him and he then admitted that, yes, in fact, the criminal history did belong to him. There was one discrepancy on the criminal history that we later determined was a typo, but he did admit that the criminal history belonged to him. And I asked Mr. Lefsih why did he --

Q And just for the record, that discrepancy or that inaccuracy was an indication that he had been charged or convicted of possessing liquor for sale?

A Yes, sir.

Q Okay.

A And in, in reality, it was operating a taxicab without a manifest. It was a misdemeanor conviction.

Q Okay.

A Mr. Lefsih stated to me that he did not answer -- he answered no to all those questions because, specifically in Question No. 23 it asks, you know, "or" -- at the end of the question it says "or detained by any law enforcement officer." And he said, well, he was never detained so, therefore, it didn't apply to him. But the question specifically asks -- and I showed it to him again -- the question specifically asks, "Have you ever been arrested, cited, or detained?"

And then, and then the following question, Question No. 24, it asks the question again in a -- in a different -- in a different way, "Have you ever been charged with committing or attempting to commit or assisting in committing a crime or an offense?" And it, it goes on and at some point it allows the applicant to list each one of those citations, arrests, or any of those encounters. Mr. Lefsih just stated, well, it didn't to him because he was never detained.

Q And he, he answered no to that, that second question you just referred to --

A Yes.

Q -- as well on, on the N-400 and at his interview?

A Yes, sir.

Q Was Mr. Lefsih asked about the, the video clip from his Facebook page?

A Yes, sir.

So after showing him his criminal history and, and reviewing it with him and showing him that there was a discrepancy on his application, he admitted to that. I went back and asked him Question No. 10 again about his affiliation with, with any type of a terrorist organization and again, he said, no.

So at that time I, I asked another officer to come in, two other officers that were waiting outside. They had a laptop. We showed Mr. Lefsih the video. Mr. Lefsih admitted that he posted the video to his Facebook account at some point in November and that he had taken it down at some point in November, but he didn't exactly remember the dates, didn't, didn't remember and, and when we tried to put it in context with him with the Paris terrorist attacks, he, he terminated the interview at that time.

Q And again, this was on December 8 of 2015, that interview?

A Yes, sir.

Q And then on, three days later, December 11, you swore out the criminal complaint in this case before Judge Gates?

A Yes, sir.

Q And Mr. Lefsih was arrested later that day?

A Yes, sir.

Q And you also obtained search warrants for Mr. Lefsih's phone, laptop, and Facebook account, is that right?

A Yes, sir.

Q Still waiting results on the Facebook account?

A Yes, sir.

Q But the FBI was able to identify some, some photographs or pictures that had been posted on Mr. Lefsih's Facebook page, is that correct?

A Yes, sir.

MR. GOULIAN: May I approach?

THE COURT: You may.

BY MR. GOULIAN:

Q What is Government's Exhibit 1? (Counsel shows exhibit to the witness.)

A It's a, a picture of -- a partial, a partial picture of an ISIS flag, but written in bold letters over it, it says, "ISIS, Trail of Terror." It has approximately seven jihadists in black clothes --

Q And --

A -- with AK-47s walking down the street. This was posted onto Mr. Lefsih's Facebook account, one of his Facebook accounts on November 26, fourth days before his naturalization interview.

Q Now just to make it clear for the record, ISIS stands for the Islamic State in Iraq and Syria?

A Yes, sir.

Q It's been designated by the United States as an international terrorist organization?

A Yes, sir.

Q And is -- does ISIS make use of social media to propagate

its message?
A Yes, sir, very much.
Q And that message includes committing acts of violence?
A Promoting -- yes, sir, and promoting radical jihadist actions.
Q Now the FBI is still in the process of analyzing Mr. Lefsih's electronic devices?
A Yes, sir.
Q Has it identified additional indications of extremist beliefs, signs that, that Mr. Lefsih supports violence?
A Yes, sir. There's -- there have been, I would say, numerous, numerous things that lead us to believe that, that Mr. Lefsih is, is, is promoting or has been, has been promoting radical Islamic ideology.

There was a -- there was an audio file that was -- that was -- that was lifted from his cell phone that we were able -- it was, it was in French that they translated. The audio file was, was on November 22nd of 2015, a few days after he removed the video from his Facebook account. The audio file says, "Listen. Do not write anything. You have -- you can have audio conversations as you like, but do not write. You have to know you are in the OCEVIN (phonetic). It is a different system. You don't, you don't know even who you are dealing with. So it is better to be careful than sorry. I'm telling you that writing something could be evidence against you in any court of law. You don't know who you are dealing with. Be careful, man. Do not write anything."

There was another -- there was another image that -- or -- or -- that was -- information that was removed from his Notes section from Mr. Lefsih's iPhone and it appeared to be notes written about a, a female, 31-year-old Saudi female in New Orleans until 2019. It -- to provide some context of this, most of the texting and most of the -- most of the texting that we were able to recover from Mr. Lefsih appears to be where he is trying to engage other women and, and try to determine their, their willingness to, to maybe follow Islamic principles.

So he's, he's engaging with a lot of different women for a short period of time trying to, you know, engage them in conversation and then when that doesn't work out he moves on to another one.

This particular one -- there's -- so it looks like he's, he's written notes about this individual. So it says, "Radiology resident, 31 years old, Saudi, black, in New Orleans until 2019. Arabic, Arabic and English. Not legalized until we live together. No family drama. We fix issues between us."

And then there's two lines that are written in, in Arabic that we had to have translated. The first line reads, "Obedience only in permitted." And -- and we -- we-- which may mean something like the wife should only obey her husband in permitted things. The second line of Arabic translates approximately as, "Why? Immigration and jihad."

There was another text that we recovered that was written in approximately August of this year --

Q August 2015?

A -- August 2015, where he was commun, texting with an individual by the name of Lindsey. Lindsey, you know, they were texting back and forth and it came up that Lindsey had tattoos and had a tattoo of a bird and he referenced, "Oh, well, do you like, if you like birds, do you like green birds?" And, and she responded back, "Well, I like," you know, "Sure. I like, I like birds. I got tattoos of them, but," you know, "I kind of like all birds." And the reference -- what he had, what he had extended out there, or what it appeared that he was extending out there the reference to her was lost. But, but we know that, that a "green bird" is a reference that Islamic jihadists use to -- when -- when -- when -- they believe that when they, when they die when committing, you know, a jihadist act, that their spirit goes to heaven as a green bird and that they fly around in heaven for a period of time until their body is reinstated to them.

There was another text where he -- it was literally on the anniversary -- and I don't have, I don't have a copy of the exact text with me up here -- but the, there was a text that he texted. Mr. Lefsih was, in addition to texting these females, he -- he -- he's also texting these hadiths which, which appear to be like a scripture on a regular basis, that he's texting these two individuals, Omar Jabber and Ahmed Fatsih (phonetic). He's been texting these two individuals for approximately a year and a half where he's texting them these hadiths on a, sometimes frequent, sometimes infrequent basis and on November 13, 2014, which was exactly one year prior the Paris terrorists attacks, he texted a hadith, which was referencing jihad in the way of Allah to these two individuals.

Q Now a text was also found on the phone that he wrote, that appears to have been written on December 8, 2015, the day that you interviewed him, correct?

A Yes, sir.

Q And, and that, that text refers to being -- well, do you recall what it says?

A I don't recall exactly what it says. I do, I do recall the text, but he -- he made a -- it appeared that the text was sent out after agents had come and interviewed him and it was -- it appeared that he was making a text saying that -- that, you know, that we were -- that Muslims were being targeted and that they were, you know, being --

Q Based on their religion or, or free speech?

A Yes, sir.

Q Now did you subsequently determine that, contrary to what Mr. Lefsih told you, that he did, in fact, have a roommate?

A Yes, sir. We -- at the time -- we conducted the interview on, on December 8 and then when we went back to his apartment on December 11th, there, there was no one else there. And again, we didn't search Mr. Lefsih's apartment, but -- but -- when -- on December 31st I was attempting to locate Mr. Omar Jabber and Mr. Ahmed Fatsih and I was near Mr. Jabber's apartment, which is located really close to Mr. Lefsih's apartment.

So we drove by Mr. Lefsih's apartment to see if they had removed his belongings or to see if he still had, you know, what, what the situation was with his apartment.

And when we, when we arrived at his apartment the windows were still open. The windows were open. They weren't, they weren't in the same condition they were when we had left and I could see through the window that there appeared to be a bedroll or something and, and some luggage in his -- in the -- in the living room that wasn't there before.

So on Monday of this week myself and another agent went back to the apartment at approximately 6:00 in the morning and we encountered Mr. Lefsih's roommate, Mr. Abdul Rahin, Rahini (phonetic). Mr. Rahini said that, that he knew that Mr. Lefsih had been arrested. He didn't know why he had been arrested. He just said that Mr. Lefsih's friends had come by and told him that he had been arrested, but wouldn't tell him why. And Mr. Rahini explained his relationship with Mr. Lefsih -- excuse me. He stated that he was Moroccan, Mr. Lefsih was Algerian and that they, they had been living together for approximately a year and a half and that, Mr. Rahini said that he works construction in the morning. He leaves really early in the morning and comes home in the afternoon and that he, he doesn't have a relationship with Mr. Lefsih other than sharing an apartment together. He stated that oftentimes he comes home. Mr. Lefsih is in his apartment and he leaves for work and Mr. Lefsih is in his room -- excuse me -- and that they don't, they don't interact very much.

Q Did you obtain any information about Mr. Lefsih's current status at NC State?

A At the time that he was arrested NC State police officers were, were present and they served him with paperwork stating that he wasn't allowed back onto campus and that if he was, was to come back onto campus they would arrest him for trespassing.

Q What -- if, if Mr. Lefsih is convicted on either of the counts in the indictment, what effect will that have on his status?

A At that time we, we will place him into deportation proceedings to have him removed to Algeria.

MR. GOULIAN: No further questions.

THE COURT: All right. Any cross-examination?

MS. DOMINGUEZ: Yes, Your Honor.

CROSS EXAMINATION

BY MS. DOMINGUEZ:

Q Good morning, Agent Bell.

So you stated that you first became aware of Mr. Lefsih through this tip about this video on his Facebook account, correct?

A Yes, ma'am.

Q So no one in the Department of Homeland Security was aware of him prior to that?

A Well, I mean, no -- as a potential threat or, or a concern to go interview him? I don't -- yes. Well, clearly, we knew who he was 'cause he has a immigration alien file and that's -- USCIS is, is an agency within the Department of Homeland Security.

Q And the Department of Homeland Security was aware that he had applied to the United States Navy previously?

A I, I'm unaware of that.

Q You worked on this case with another agent, Agent Allen, correct?

A Yes.

Q Agent Allen never mentioned that he was aware that he had applied to --

A He --

Q -- the U. S. Navy?

A He hasn't told me that, no.

Q Okay.

Now you stated that the Facebook, the Facebook analysis in this case is not complete, correct?

A We have not, yes.

Q But you've looked at his Facebook?

A I've reviewed what -- what -- I have reviewed what appears to be -- Mr. Lefsih's Facebook appears to be partially, partially restricted and I reviewed approximately the last two years' worth of postings that, that, that are available for me to see.

Q That is the unrestricted version of postings, is that what you're suggesting?

A I'm -- I guess so, yes, ma'am.

Q And so in these Facebook points, his -- you might have noticed his opening screen chat is a picture of those three American Muslim students that were killed in Chapel Hill. Did you notice that?

A Yes, ma'am.

Q And did you notice how many friends he has on Facebook?

A No.

Q Now you're aware of the First --

A I mean --

Q -- Amendment.

A -- I'm sure I did, but I, I did not -- I don't, I don't recall at the time, you know, now.

Q You're aware of the First Amendment --

A Yes, ma'am.
Q -- right?
And you're aware that, that the First Amendment protects free speech?
A Yes, ma'am.
Q And that freedom allows people to state and speak their opinions, even on Facebook, correct?
A Yes, ma'am.
Q And so there's nothing, per se, wrong with being against American involvement in Syria, correct?
A No, ma'am.
Q And there's nothing, per se, wrong with mourning dead children in Syria, correct?
A No, ma'am.
Q And there's nothing, per se, wrong with being concerned about anti-Muslim sentiment in America?
A No, ma'am.
Q And there is nothing wrong with posting links to certain political figures and commenting in agreement or disagreement?
A No, ma'am.
Q Now when you're looking at his Facebook did you come across the Facebook where he posted a link to a poll that said that a majority of Republicans support Trump's Muslim ban and he commented, "Sad"?
Did you come across that one?

A No.

Q Did you come across a posting where he said he wanted to join the Navy and serve like other Muslims to defend our Constitution, but needed to get his Bachelor of Science degree first, did you see that one?

A I did see something, something to that effect, yes.

Q Did you come across a Facebook posting where he said, "I am a Muslim and there is nothing Islamic in killing innocent people in France, the United States, or anywhere in the world," did you see that posting?

A No.

Q Did you see the posting where he thanked Lindsey Graham for his statement to Trump that, "The majority of Muslims die by thousands fighting ISIS," and telling Donald Trump to go to hell, did you see that posting?

A No.

Q Now you, you did talk about a posting where, but I don't think you talked about the image.

He had -- did you notice the posting where he had a picture of a police officer, a uniformed police officer speaking with an apparent, a person dressed in Muslim attire and then it was quoted, a statement that the user, the Facebook user -- so Mr. Lefsih quoted -- and the quote was, "With Islam being hijacked by terrorists and Islamophobes, dialogue is necessary"? Do you recall seeing that image and that statement?

A I remember seeing the image, but I didn't talk about that earlier.

Q Okay. Sorry. I thought you had.

Did you recall seeing lots of images of pictures of Syrian children with missing limbs or fatally wounded?

A Yes.

Q Do you recall seeing pictures of political cartoons?

A Yes.

Q Do you recall seeing pictures of, showing support for Arte Erdoğan, the President of Turkey, the current President of Turkey, and self-described as a conservative Democrat?

A No.

Q Did you see a post, the posted photo -- so there was -- the, the top of his page where it's like his, you know, his image is the three students that were killed in Chapel Hill.

Did you go farther to actually look at that image and when it was uploaded and see that he wrote, "Our three martyrs"?

A I, I believe -- I remember that, but I don't --

Q Now jihad, in fact, has more than one meaning, doesn't it?

A Yes.

Q It, it, in fact, means "struggle," correct?

A That definition has been given to me, but that is not the -- that is not the reference that jihad is used in this video.

Q But --
A It's not a struggle against Allah to go to, to go to Syria and fight for the mujahedeen.
Q I understand, but my question is, "jihad" has multiple meanings, correct? It can mean --
A I'm not --
Q -- internal struggle?
A I am not a -- I'm not going to get in, into Arabic translations. I, I have heard two different definitions. It's internal struggle and -- and here in the -- here in the West it, and the way it's being used in this video, it's about conducting, going out and, and fighting. And that's, that's the interpretation I use.
Q Now that's the video -- that video is the Sheikh Qaradawi video that you're speaking of?
A Yes.
Q And when you spoke of it you said that it appeared to be like a cell phone video --
A Yes.
Q -- correct?
And that -- you're not suggesting that Mr. Lefsih was somewhere recording that video of Sheikh Qaradawi, correct?
A By no means.
Q So Mr. Lefsih encountered that video, correct?
A Yes.

Q And posted it on his Facebook?
A Yes.
Q And there was a message that he posted in his own language with that video, correct?
A I believe he wrote, "Sheikh Qaradawi regarding jihad in Syria." It -- it was --
Q Or "on jihad and Syria," correct?
A It said, "Sheikh Qaradawi about jihad in Syria."
Q Okay. So that's a relatively benign statement, correct? It's just say -- it's just noting what the video is about, correct?
A Right. He's sharing this and he took it down the day after the Paris attacks.
Q I understand, but answer my question, Agent Bell.
A "Sheikh Qaradawi about jihad in Syria."
Q Thank you.
And so that video can be obtained on the Internet, correct?
A I assume so.
Q And posting that video would be an exercise of free speech, correct?
A Sure.
Q Now --
MS. DOMINGUEZ: Just a minute, Your Honor, please.
(Pause)
BY MS. DOMINQUEZ:

Q You stated on direct that Mr. Lefsih was here on a diversity visa from Paris, correct?
A Yes.
Q You didn't mention, but he did, did have his green card and was a permanent resident, right, post -- the immigration visa gets you here with a lottery and then he had his green card as a permanent resident, correct?
A That's what I said.
Q And he, and he still has that green card?
A Yes.
Q Now you noted that you had an interview with Mr. Lefsih.
In that interview, did he inform you of the languages he speaks?
A He told me he spoke Arabic, French, and English.
Q And you also spoke of an interview that he had on the 30th of, I believe you said the 30th, of November with whoever reviews the N-400 form, his naturalization form --
A Yes, ma'am.
Q -- immigration official?
Are you aware of whether that immigration official ever informed him that "citation" means traffic ticket?
A No.
Q And so the misdemeanor convictions that you spoke of, they were traffic related, correct?
A Yes.

Q So every offense that he has is traffic related?
A Yes.
Q Failure to maintain a lane. Some of, some of the offenses were actually dismissed, correct?
A Yes.
Q And so the ones that were misdemeanor offenses, you didn't list them. I think you talked about the failure to have a manifest as a taxi driver being the one that you spoke of on the stand, correct?
A There was, there was three that I know that he, that he was convicted of.
Q But --
A But I don’t -- I -- one of them being the failure to maintain a manifest. I think --
Q One of them might have been sitting within five feet of a curb, or something --
A Yes, ma'am.
Q -- as a taxi driver?
A Yes, ma'am. That --
Q Nothing that he would have been arrested for, correct?
A No, ma'am.
Q Now you stated that he told you he had a master's degree from Paris?
A He actually told me when, during the interview that he had a bachelor's degree from Paris, but in his application for his

-- his -- his diversity visa application he said he had a master's degree and he provided, you know, his paperwork said he had a master's degree. But when we were talking to him he said he had a bachelor's degree.

Q And are you aware that in Paris they're not, they're not really given those terms? They're not called bachelor's degree.

A No.

Q In fact, what he actually has is a license. It's called a license from Paris, were you aware of that?

A He wrote on his -- no, I'm not. And he wrote on his -- in -- on his diversity visa application that he has a bachelor's degree in something from Algeria and that he has a master's degree in physics from, from Paris.

I'm going by what he wrote and then when I interviewed him he said he's got a bachelor's degree from --

Q Right, but if they're not denoted in the exact same way --

A I don't --

Q -- there might be a way that you just kind of --

A I don't know.

Q -- make the equivalent justification?

So let's talk about these exhibits.

The exhibit that you referenced, I believe, it's Government's Exhibit --

MR. GOULIAN: It was marked as 1.

BY MS. DOMINGUEZ:
Q -- 1, the one that says ISIS, Trail of Terror.
He did not post any comment about whether he was in support of this photo or not in support of this photo, correct?
A No.
Q And, in fact, ISIS, Trail of Terror does not have one meaning, does it? Posting this photo does not necessarily mean one is a proponent of ISIS, does it?
A I say that it does, yes. If you're going to post this on your Facebook account, I say --
Q And --
A -- that you're -- you're -- you're -- you're advocating the group.
Q So you're saying that there's no reasonable explanation for this picture where it says "Trail of Terror" being a picture that says, "These people are terrorists," that this picture with the words "Trail of Terror" can't be, "These people are terrorists"?
A I don’t, I don't read it like that, no.
Q You don't read it like that?
A No.
Q So -- now isn't it true that when you're look, when you've been looking at his text messages on his cell phone it's pretty clear that he's looking for a female companion?
A Yes.

Q It's pretty clear that he's looking for a wife, correct?
A Yes.
Q And so wanting to know that they follow Islamic principles, there would be nothing wrong with someone following, a Muslim man wanting to find a woman that follows Islamic principles, correct? There's nothing wrong with that, correct?
A There's nothing wrong with that.
Q In fact, that's --
A Why would he --
Q -- that's what one --
A Why --
Q -- would expect?
A Why would he write --
Q Agent Bell, answer my question.
That is what one would expect, correct? That a Muslim man would be interested in a woman that, by your terms, is willing to follow Islamic principles?
A If, if that's what he's looking for. I don't know what he's looking for.
(Pause)
BY MS. DOMINGUEZ:
Q And you're -- I might have been reading and not hearing your full answer.
You were stating before that you asked him if the question he had a roommate and he denied having a roommate?

A When we first --
Q Is -- was that --
A -- got to his apartment we asked him if he was, if he had a roommate and he said no.
Q And were you asking him at the same time if he had leased, if he leased the apartment?
A I didn't ask him if he leased the apartment or if his roommate leased the apartment. We asked him if there was anybody else living in the apartment with him and he said no.
Q Now you stated you were with him and the NC State police officers were with you. Is that because you --
A I didn't --
Q What were they there for, the NC State police officers?
A It appears that they were serving him notice not to come back onto campus, that he was going to be treated, considered trespassing.
Q But -- but that --
A I did not ask NC State police to come to -- to -- along to arrest him.
Q But that was notice based on information you had provided to the NC State Police Office?
A Probably when they originally, when FBI originally went to them trying to get them to interview him and he denied, he didn't want to talk to them.
Q So the NC State police officers were aware of Mr. Lefsih by

virtue of --

A The investigation.

Q -- the FBI?

And did you ever take a look at that paperwork?

A No.

Q Do you know what their basis is for it?

A No.

Q Are you aware that the school still shows him registered?

A No.

Q Are you aware that the school still says that he would be eligible for re-enrollment this spring?

A No.

Q Did he tell you that he had a 3.82 in his field of study?

A No.

Q How are you able to determine -- you talked about this Be Careful audio file found on the phone, you know, this, this audio file that you were talking about where someone said, "Be careful. Things can be -- don't write anything down."

Have you determined who the voices are on that audio file?

A No.

Q Do you know that voice to be Mr. Lefsih's?

A No.

Q Do you have any idea of the origin of that audio file?

A No.

Q Are you aware of a text -- did you testify about a text that he had sent himself stating that, "The Muslim religion is being hijacked by ISIS and Islamophobes"?

A I believe that was one he sent on the day that we were, we interviewed him on December 8th.

Q So you are aware of that statement. And that's not a statement in support of ISIS, correct?

A No.

MS. DOMINGUEZ: Your Honor, if I may have a moment?

THE COURT: You may.

(Pause)

MS. DOMINGUEZ: Your Honor, one -- if I may have a moment?

THE COURT: You may.

(Pause)

BY MS. DOMINGUEZ:

Q Agent Bell, do you have access to that piece of paper that the NC State Police Department, or the, you know, the Campus --

A No.

Q -- police officers?

You at no time took that piece of paper from Mr. Lefsih while he was being taken into custody with the U. S. Marshals?

A If, if I did, I didn't, I didn't realize it. I, I have -- there was a couple of -- there was a couple of pieces of paper that, that I did maintain because he couldn't take any property with him into custody and I have them in a folder in my office.

But I, I don't even -- honestly, I don't -- I think one of them was a receipt basically saying that he didn't have anything and there was another piece of paper -- I know there's two pieces of paper in the folder. I don't --

Q So it might -- it may very well be this statement from the NC State Police?

A Yes, ma'am. But I -- I -- I have not looked at it.

(Pause)

BY MS. DOMINGUEZ:

Q I'd like the opportunity to show you certain images to see if you recognize these from his Facebook page.

MS. DOMINGUEZ: May I approach, Your Honor?

THE COURT: You may.

MS. DOMINGUEZ: I'm approaching with what I have marked as Defendant's Exhibits 2 through 6.

BY MS. DOMINGUEZ:

Q Can you just quickly look at those four images and let me know if you recognize them? And specifically, if you recognize them from seeing them on his Facebook. (Counsel shows exhibits to the witness.)

A All but the last one.

Q Okay. So you recognize Exhibits 2, 3, 4, and 5. You just don't recognize Defense Exhibit 6?

A No.

Q None of these are showing support for ISIS, correct?

A No.

MS. DOMINGUEZ: Your Honor, I have no further questions at this time.

THE COURT: All right.

Any redirect?

MR. GOULIAN: Your Honor, I'd just move Government's Exhibit 1 into evidence.

And excuse me. If I could just consult with Ms. Dominguez.

(Pause)

MR. GOULIAN: No questions for the witness, Your Honor.

THE COURT: Okay.

MS. DOMINGUEZ: Your Honor, I would like to proffer those Defense Exhibits 2 through 6, just put them into the record as images.

And I also have a Defense Exhibit 1 that I'd like to at the appropriate time. It's a document from NC State University denoting his enrollment, well, his curriculum as of last semester and his term date and, you know, and end date and that he was a full-time student.

THE COURT: Okay.

MS. DOMINGUEZ: But, obviously, this witness is not the proper witness for that.

THE COURT: All right. Thank you.

So no other questions for this witness?

MR. GOULIAN: No, Your Honor.

THE COURT: All right.

Thank you, Agent Bell, for your testimony.

All right. And there are no objections to any of the exhibits?

MR. GOULIAN: No, Your Honor.

MS. DOMINGUEZ: No, Your Honor.

THE COURT: All right.

MS. DOMINGUEZ: Your Honor, can I -- for a matter of housekeeping before I call my witness, I -- Mr. Lefsih -- the indictment in this case came down just yesterday.

So his initial appearance was as to an Information. And so I didn't know if this Court needed to readvise of anything at any particular time.

(Pause)

THE COURT: And, Mr. Goulian, before we go any further, was there any other evidence on behalf of the Government?

MR. GOULIAN: Your Honor, if, if it would help, this is -- the -- Agent Bell already testified, but if it would help the Court I do have just a document that contains the, the audio file that he, or that was found on Mr. Lefsih's phone in French. Agent Bell read a translation of that into the record.

So I have the English, that in English and also the,

the biographical information about the female radiology resident in New Orleans and the translation of the Arabic below, if it would just help the Court to refer to that rather than relying on Your Honor's memory as to what he testified.

THE COURT: Okay. Do you want me to have that?

MR. GOULIAN: And I think --

MS. DOMINGUEZ: Your Honor, the defense would request a copy and would request --

MR. GOULIAN: Yes.

MS. DOMINGUEZ: -- that --

MR. GOULIAN: Your Honor, I have, I do have a copy to provide.

And I'll just write on it it's Exhibit 1.

THE COURT: All right.

MR. GOULIAN: For (inaudible) purposes.

(Pause)

MR. GOULIAN: No additional evidence from the Government, Your Honor.

THE COURT: Okay. Thank you.

All right. So before we go forward any further, I, I do see now the criminal complaint with which he was originally charged only had one offense, is that correct?

MS. DOMINGUEZ: That's correct, Your Honor.

THE COURT: In the indictment he's been charged with an additional offense?

MS. DOMINGUEZ: That's correct. It's the same statutory provision. It's the same naturalization form provision.

MR. GOULIAN: And, Your Honor, criminal complaints don't normally list counts. I mean --

THE COURT: Right.

MR. GOULIAN: -- it lists statutes that are being, that the defendant is charged with being violated.

(Pause)

THE COURT: All right.

So, Mr. Lefsih, you were, you were advised of your rights yesterday before --

MS. DOMINGUEZ: Your Honor, I --

THE COURT: -- Judge Numbers, was it?

MS. DOMINGUEZ: Yeah. I've continued this matter a number of times, so.

THE COURT: Oh, okay. I'm -- I see.

MS. DOMINGUEZ: The indictment --

THE COURT: So he was previously -- the indictment came down yesterday.

You were previously advised of your rights in this matter with regard to the criminal complaint that was filed against you, is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And have you received a copy of the indictment returned by the Grand Jury yester -- actually, it says on the 5th of January.

MS. DOMINGUEZ: It was processed yesterday, late yesterday.

THE COURT: Have you received a copy of the indictment returned by the Grand Jury on January the 5th?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And you understand that you are charged in that indictment with two counts. Count 1 charges that on or about September the 1st, 2015 that you made a false statement under oath in a case proceeding in matter relating to and under and by virtue of any law of the United States relating to naturalization, citizenship, and registry of aliens, specifically that you stated falsely in an application for naturalization, Form N-400, that you had never been arrested, cited, or detained by any law enforcement officer for any reason when, in fact, as you then knew, you had been cited and detained by law enforcement officers on at least eight occasions since on or about May 31, 2011, in violation of 18 United States Code, Section 1015(a).

And Count 2 charges that on or about November the 30th, 2015, that you knowingly made a false statement under oath in a case proceeding in matter relating to and under and by virtue of any law of the United States relating to naturalization, citizenship, and registry of aliens, specifically that you stated falsely during a naturalization interview that you had never been arrested, cited, or detained by any law enforcement officer for any reason when, in fact, as you then knew, you had been cited and detained by law enforcement officers on at least eight occasions since on or about May the 31st, 2011, in violation of 18 United States Code, Section 1015(a).

Do you understand that, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right.

And, Mr. Goulian, can you just advise the defendant as to what the maximum punishments are for those offenses?

MR. GOULIAN: Yes.

As to both counts, the maximum penalty is not more than five years imprisonment, a fine of not more than $250,000, a term of supervised release of up to three years, if supervised release if revoked, then a term of imprisonment of up to two years, and a $100 special assessment.

THE COURT: Thank you.

And, Mr. Lefsih, do you understand the maximum penalties that you face if convicted of these offense?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay.

And you recall being advised of all of your rights in connection with the charges that were brought against you in the criminal complaint?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that those rights that were explained to you at that time, that those apply with equal force with regard to the offenses that are set forth in this indictment?

THE DEFENDANT: Yes, ma'am.

THE COURT: Specifically, that you have the right to have a lawyer represent you throughout the proceedings and that if you're not able to afford to hire your own lawyer, then the court will appoint a lawyer to represent you;

That you have the right to remain silent and that if you, and that if you make any statement regarding the charges, that anything that you say can be used against you.

You understand all of that?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right.

And were you advised that if indicted, that you would be called upon to enter a plea to the charges against you? Did you receive that advice?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And you understand that you can either plead guilty or not guilty and that if you plead guilty, you'll be admitting what the Government charged you with in the indictment and you won't get a trial?

THE DEFENDANT: Yes, ma'am.

THE COURT: But that if you plead not guilty to any charges against you you will be entitled to a jury trial and at that trial you'll be presumed innocent and the burden is upon the Government to prove that you're guilty beyond a reasonable doubt.

Do you understand --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- all of that?

THE DEFENDANT: Uh-huh. (Indicating an affirmative response)

THE COURT: All right.

And you understand about your right to use the subpoena power of the court to force witnesses to come into court to testify? Do you understand your right to use the subpoena power of this court --

THE DEFENDANT: Oh. Yes.

THE COURT: -- at court proceedings?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay.

And were you advised as well that if you're not a United States citizen that you have the right to request that an attorney for the Government or a federal law enforcement official notify a consular office from your country of nationality that you've been arrested? Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Thank you.

All right. All right.

Anything else, Ms. Dominguez, that you feel like that your client may need to be advised about with regard to these charges?

MS. DOMINGUEZ: No, Your Honor.

THE COURT: Okay, thank you.

All right. Do you intend to present any evidence with regard to the issue of detention?

MS. DOMINGUEZ: Yes, Your Honor.

THE COURT: Okay.

MS. DOMINGUEZ: The defense calls Djamel Berzane.

THE COURTROOM DEPUTY: Do you wish to affirm? Do you wish to swear or affirm?

MR. BERZANE: Affirm.

THE COURT: Raise your right hand. State your name for the record.

MR. BERZANE: Djamel Berzane.

THE COURTROOM DEPUTY: Spell your name.

MR. BERZANE: D-J-A-M-E-L, B-E-R-Z-A-N-E.

THE COURTROOM DEPUTY: First name one more time.

MR. BERZANE: D-J-A-M-E-L, B-E-R-Z-A-N-E.

DJAMEL BERZANE, DEFENSE WITNESS, AFFIRMED

THE COURTROOM DEPUTY: If you'd take the stand, please, and speak into the microphone.

DIRECT EXAMINATION

BY MS. DOMINGUEZ:

Q Good morning.

A Good morning.

Q I'm sorry. I think I said Djamal and it's Djamel Berzane, correct?

A Yeah. The "D" is silent.

Q Do you know my client, Mr. Lefsih?

A Yes, I do.

Q How long have you known him?

A Since 2013.

Q And you know him in what capacity?

A I, I used to be a roommate.

Q You were his roommate in 2013?

A Yes.

Q Did you also know him from the mosque?

A Yes.

Q What's the name of the mosque where you attend for services?

A It's called the Association, Islamic Association of Raleigh.

Q And Mr. Lefsih, you know him to be a devout Muslim, correct?

A Yes.

Q And you are as well, I take it?
A Yes.
Q For how long were you roommates?
A It's from two to three months.
Q And why did you stop being roommates?
A It was a temporary stay for me. I was just looking for a place of my own, so.
Q Now when you were roommates Mr. Lefsih was a student at Wake Tech?
A Yes.
Q And he also drove taxicabs as his job, correct?
A Yeah.
Q Do you remember him having a good work ethic as a student and a driver?
A Yes, absolutely.
Q And where do you live now?
A I live in Raleigh.
Q What's the address?
A 2609 Broadwell Drive, Raleigh 27606.
Q Is it an apartment or is it a house?
A It's an apartment.
Q How many bedrooms?
A Two bedrooms.
Q Do you live alone?
A Yes.

Q And how long have you been at that location?
A Since September 2013.
Q Is that the first place you went after you stopped being roommates with Mr. Lefsih?
A Yes.
Q And so you've been there ever since?
A Yes.
Q There are no firearms in that home, correct?
A No.
Q And there are no illegal drugs in that home?
A No.
Q And you do not drink --
A No.
Q -- correct?
And Mr. Lefsih is a Muslim. He doesn't drink, either, correct?
A No.
Q What's your status in this country?
A I am a naturalized U. S. citizen.
Q And that happened in 2013?
A 2012.
Q 2012 is when you naturalized as a citizen?
A Yeah.
Q When did you first come to the United States?
A 2008.

Q And what is your country of birth?
A Algeria.
Q And are you remaining -- you remain as a citizen of Algeria as well --
A Yeah.
Q -- correct?
A Yeah.
Q Are you employed right now?
A Yes, I --
Q Where do you work?
A I work at the post office.
Q Do you work at the distribution center?
A Yes.
Q Is that in Raleigh?
A Yes.
Q Does your paycheck come from the Federal Government?
A Yes, ma'am.
Q What are your hours there?
A I work from 6:30 p.m. to 3:00 a.m.
Q And this is a good job for you, correct?
A Yeah.
Q You are paid well?
A Yeah, I think so.
Q You have benefits?
A Yes, I do.

Q And you wouldn't do anything to jeopardize your job --
A No.
Q -- correct?
Q Including serving as a third-party custodian, correct?
A Yes.
Q That is, you wouldn't welcome Mr. Lefsih into your home if you thought it would cause any harm to your work or your employment here, correct?
A Correct.
Q Now you've spoken with an investigator from my office, Ken Hall, correct?
A Correct.
Q And you and I, we spoke by telephone yesterday and a little bit today?
A Correct.
Q And we explained to you that as a third-party custodian you would be agreeing to allow Mr. Lefsih to come live in the spare bedroom in your home, correct?
A Correct, right.
Q Can you answer? I didn't hear.
A Correct.
Q Okay.
A Yes. Sorry.
Q We also explained that you would be responsible for ensuring that he makes his court dates, correct?

A Yes, correct.

Q And that he abides by any conditions of release that this, that this court would wish to set for him?

A Yes, correct.

Q And we informed you that if he were to not abide by these conditions it would be your duty to inform the court that he's failing in his obligations, correct?

A Correct, absolutely.

Q And you indicated that you would be willing to do that?

A Yes, ma'am.

Q You would be willing to give him a place to stay, correct?

A Yes.

Q You would be willing to help, help him make his court appearances?

A Correct.

Q And you would be willing to report any failures of him to abide by his conditions --

A Yes.

Q -- correct?

A Yes.

Q And you would certainly do this because you wish for, for this not to cause you any personal harm, correct?

A Of course.

Q Now you informed us that you do not have a land-line telephone in your home, correct?

A Correct.

Q But you also informed us that if this Court were to order electronic monitoring in a way that needed a land-line telephone, that you would be willing to do that?

A Correct.

Q And you are aware of the charges that are pending against Mr. Lefsih, correct?

A Correct.

Q He's been charged with knowingly making false statements on his naturalization application and in his naturalization interview. You're aware of that?

A Yes, I am.

Q And you've been in court while you've listened to everything that's been said here today?

A Yes.

Q So now you're aware of his speech that's been on his -- that were -- that the agent has been talking about with respect to his Facebook, correct?

A Absolutely.

Q And you are willing to serve as his third-party custodian --

A Yes.

Q -- correct?

A Yes.

Q You do not have any criminal record?

A No.

MS. DOMINGUEZ: No further questions at this time.

THE COURT: All right.

Any cross-examination?

CROSS-EXAMINATION

BY MR. GOULIAN:

Q Is it -- I'm sorry. Mr. -- how do you pronounce your last name? I'm sorry.

A Berzane.

Q Berzane.

So, Mr. Berzane, who, who else lives in the house with you currently, in your, in your residence?

A Just me.

Q And you said your hours are from 6:30 p.m. to 3:00 a.m.?

A Correct.

Q How many days a week?

A Five days a week.

Q Monday through Friday?

A I have Saturdays and Mondays off.

Q Saturdays and Mondays?

A Yes, split days.

Q All right.

MR. GOULIAN: No further questions.

THE COURT: All right.

Anything further?

MS. DOMINGUEZ: No, Your Honor.

THE COURT: All right.

Thank you, sir, for your testimony --

THE WITNESS: Thank you.

THE COURT: -- today.

THE WITNESS: You're welcome.

MS. DOMINGUEZ: Your Honor, I would like the opportunity to present this Defense Exhibit 1 that's been previously been given to the clerk to --

THE COURT: Okay.

MS. DOMINGUEZ: May I approach?

THE COURT: You may.

(Pause)

THE COURT: All right. Any further evidence, Ms. Dominguez?

MS. DOMINGUEZ: Nothing further, Your Honor.

THE COURT: All right.

Anything further on behalf of the Government?

MR. GOULIAN: No further evidence, Your Honor.

THE COURT: All right.

I will hear arguments.

MR. GOULIAN: All right. Thank you, Your Honor.

Your Honor, the primary basis for detention here, the Government would submit, is that Mr. Lefsih presents a risk of flight. As noted in the probation report, he lacks familial, residential, community, employment, property, and financial ties and I would submit not only such, does he lack such ties to the Eastern District of North Carolina, but to the United States. His family is in Algeria. He has -- and he was, lived in France for about five years prior to coming to the United States and his only other apparent connection in the, in the United States, at least, is, is to New York where, apparently, he lived for a period of time before coming to North Carolina.

As -- I would note that the -- I just want to address the exhibit that Ms. Dominguez entered, Exhibit 1, the, the information from NC State. I would submit that does not indicate anything about his current enrollment status. It just shows that in the past, in the fall 2015 term, which ended on December 16, he was enrolled fulltime.

So the evidence is that he is not a student there and is, in fact, would be trespassing if he went back on the NC State campus.

But most significantly, I would submit, Your Honor, is the evidence of Mr. Lefsih's dishonesty and his lack of candor. That would be, first and foremost, the offense conduct in this case, which charges him with lying twice under oath regarding his criminal history in an application for citizenship. The evidence of this is, I would submit, is quite strong. It would consist, primarily, of his, the N-400 application, which he filled out, his false statements at the interview, and then the

-- the -- his criminal history, which shows numerous citations and in conjunction with those traffic stops, detention as well.

There is also -- the evidence was that he was not truthful to the agents when they asked him if he had a roommate and he gave the same response, apparently, to the probation office. Because in the, in the Pretrial report it states that he currently lives by himself in a rented apartment, which he has maintained since 2013. That's not true. He's had a roommate fort at least a year and a half. I don't know why he would lie about that, Your Honor, but I would think this all goes to the -- I think it would be very difficult for this Court to have confidence that he would comply with conditions of release.

And I would note that in, in many cases the defense will argue that the, that the defendant was cooperative with law enforcement in support of an argument for release and they, they can't make that argument here. He really has not been cooperative.

A conviction on the counts will result in his deportation to Algeria. So I would submit that contributes to risk of flight here since that is likely where this will end up where the, the ultimate outcome of these proceedings. That, in and of itself, creates a risk of flight.

Now I would also submit that there is, there is indication that he is a danger to the community. And that would consist from his posting of ISIS propaganda, which is how this terrorist group has been spreading its message across the world and he has -- he does not, as Ms. Dominguez pointed out or will point out, the posting does not indicate, say that, "I support this," or, "I believe in this," but you don't have to. I mean, that -- that -- that picture and the graphics are intended to convey the message that ISIS is a force to be reckoned with, that they're to be respected, and that they are powerful. And by posting it on, on Facebook, that is propagating that message and that message, as I'm sure Your Honor knows, is resonating, resonating throughout, among certain people in the United States and across the world.

There are a lot of unanswered questions about Mr. Lefsih's intentions. This is an ongoing investigation. As Your Honor knows, this investigation just began barely over a month ago, December 1st, but there are a lot of unanswered questions and, and indications that raise concerns about him. There is the audio file summarized in Government's Exhibit 2, which states to be, "I'm telling you that writing something could be evidence against you in any court of law." I mean, I think that raises some very -- whether -- and whether that's a message that someone conveyed to him or whether he was conveying to someone else, either way, I, it suggests that there's something -- it's talking about something that could result in a court of law.

There is the other indications of -- indications of extremism on his part include the reference to "green birds" in the, in the texting with the, the woman. As the agent testified, green birds is a symbol of martyrdom to those who, to, to extremists.

There is the, the personal information about the Saudi female in New Orleans with the handwritten message in Arabic that concludes with, "Why? Immigration and jihad."

And finally, there, there are indications that, that Mr. Lefsih is very, is attentive to what is on his Facebook page to the point of manipulation. He, he removed the, the initial video that came to the FBI's attention, a video, I would add, that was promoting a violent jihad, not just struggle, violent struggle in Syria, was -- he took down, he took that down off of his Facebook page immediately after the Paris attacks.

So we don't know at the moment what, what else he might have taken down. I don't know if we're going to be able to get that information from, from Facebook, but we are -- that is part of the ongoing investigation.

There is the, the text message he sent to himself on the day of his interview with the law enforcement agents that appears to, you know, on its face is, arguably, self-serving, that it, essentially characterizing himself as a, as a victim being targeted for his religion and his free speech.

And on -- a far as free speech goes, Your Honor, certainly, you know, all the -- none of the stuff in and of itself is a crime, to, to post, to believe in, but we are in the context of a detention hearing where Your Honor has to work off of, really, very limited information about an individual to determine whether they're going to comply with conditions of release, whether they present a danger to the community, and I -- it's certainly legitimate to consider speech and protected speech in terms of, of assessing whether someone is a risk, whether that person is a risk of flight, whether they're likely to, to be, be a danger to the community.

So I just want to make clear that that is the purpose of bringing that information before the, before Your Honor and that I don't think it's -- it's -- it doesn't -- it's not targeting him for his, his beliefs or his opinions.

So -- but, Your Honor, again, the Government's position is that the primary basis for detention here is that he is a risk of flight. Again, his lack of ties to the community, the indications of, of dishonesty and lack of candor in both the offense conduct, in his, and his lying to the agents and, apparently, to the Court about not having a roommate, I just think that there are no conditions the Court could impose that would enable it to have confidence that he will appear as required.

One second.

(Pause)

MR. GOULIAN: I'm sorry, Your Honor.

(Pause)

MR. GOULIAN: And, and, of course, Your Honor, the, the proposed custodian is, works at night. There's no one else in the house during the day. And so I, I don't think the proposed supervisory arrangement is adequate.

THE COURT: All right.

Ms. Dominguez.

MS. DOMINGUEZ: Ask that you bear with me 'cause there's a lot to respond to here.

First, I want to point out for this Court that he's charged in two charges of zero to five offenses for statements on his naturalization form and in his interview. The Government has had his phone and his computer since his arrest in, I think it was, the 11th of December -- I could be wrong, but it was sometime that week -- and now we have an indictment and he's charged in those two offenses.

So I want to state by saying there are conditions that this Court can be set, that this Court can set that are going to reasonably assure his appearance and that will ensure the safety of the community and any other people in the community.

And as this Court knows, it has to consider certain things, the nature and circumstances of the offense, the weight of the evidence, the history and characteristics, including the character of the defendant, including their length of residence in this area, and community ties, past criminal history, all of those things.

So let's talk first with -- we'll go with the Government's view and we'll talk with risk of flight, first.

The Government has failed to show by a preponderance of the evidence that Mr. Lefsih presents a risk of flight Your Honor, while he is a citizen and national of Algeria, he's here legally in the country. Right now, he's alleged to have committed an offense, but at this moment he is, he is legally in the country. He had won the lottery when he was in Paris to come over on this diversity immigrant visa and that provides authorization for you to stay in the country indefinitely. And so after five years, which is that critical amount of time that Agent Bell was talking about, he was applying for naturalization, using the lawful channels to be a naturalized citizen here. This isn't someone that you have to fear leaving. He affirmatively is showing by his actions that he wants to stay here and not leave. And --

So I would submit to you that this Pretrial Service report is simply incorrect that he poses a risk of flight.

They talk about the offense charged. It's a relatively minor naturalization false statement offense. They say he has lack of ties to the community. He is active in his mosque. He had an apartment with a roommate. He has a car.

Defense Exhibit 1 shows he was a full-time student at NC State. And, Your Honor, I can proffer to this Court that my investigator spoke with people at NC State and they said he was eligible for re-enrollment this semester. In fact, they arrested him right before his last final exam. He had taken two, gotten As, and then they arrested him before he could sit for his final, his third and final exam.

He has been in the same residence since 2013 and to say he's a risk of flight because he doesn't have any family members, which is, I think, what, kind of the, the PSR, or the Pretrial Services report is suggesting, it just seems so wholly unfair. His family members are in foreign countries and that goes to the fact that, you know, going home for him is not a hardship. His entire family is in Algeria. That's not a hardship. The, the threat of deportation isn't something that's going to send him scurrying back to Algeria. He affirmatively is trying to stay here and he affirmatively wants to exercise his rights to stay here. There is no ICE detainer in this matter because his immigration status remains.

So if you were to release him he wouldn’t be picked up by ICE. He's entitled to be here until he's, it's proven that he cannot.

We just presented a strong third-party custodian. And, Your Honor, I, I struggled with doing it because I don't even think it's necessary for him to have a third-party custodian, but if -- but I wanted this Court to have the option of a third-party custodian and I think that this Court can fashion conditions with a third-party custodian. He'll abide by any conditions. You can take away his access to the Internet. You can limit his ability to use mobile devices. You can take his passport, which has already been taken.

So you can do things that will ameliorate any concern that this Court might have for his release.

We offered up a friend that had previously been a roommate. So he knows what it's like to live with him. He's a federal employee. They go to the mosque together. This Court can limit him, like it does in many cases to the Eastern District of North Carolina. It can condition his release on other factors that this Court feels would ensure his appearance. But this is someone that's actively trying to stay here, Your Honor, not someone that's trying to flee.

I would submit to you with respect to danger, I respect that this country has a lot of fear right now and fear about Muslims, in particular, but I would submit to you, Your Honor, that this audio file that they want to present to you where he's, where someone's saying -- we don't even know who's saying it -- someone is saying, "Don't write anything down. It can be used against you." And where does that become a terrorist act, right? I mean, this is similar to government lawyers telling their agents, "Don't write that down so we don't have to turn it over," right? And what does this show? It shows nothing, Your Honor, nothing. It doesn't mean anything about terrorists. You know what? In fact, a lawyer might advise someone, "Don't write anything down. You don't want them to use that against you," right? This is, shows nothing.

What we have here is alleged crimes, Your Honor, showing that there is misstatements on a naturalization form, okay, and we point out for you that that affidavit was sworn on the 11th of December and we're nearly a month later. They've had his phone. They've had his computer. He was indicted yesterday on two naturalization charges. There are no other charges of anything that would lend itself to this Court calling him a danger.

Now when you're considering the weight of the evidence against him that Mr. Goulian wants you to consider, I think this Court should also consider its strength vis-à-vis a defense. And here, there is a defense. The statute requires that it be knowingly false statements and by the Government's own affidavit in this case Mr. Lefsih believed the questions did not apply to him because he was not detained by law enforcement. English is one of three languages that he speaks and was not his primary language.

So what are these offenses, the offenses that he failed to disclose in his application? Well, there were some things that were dismissed and they were all related to being a taxi driver, failure to maintain lane control; failure to stop at a red light; operating RCC as a taxi; driving without a license or revoked license; speeding that got reduced; failure to remain within five feet of a curb; failure to maintain a manifest; impeding traffic by sitting. Nowhere did you hear testimony that Mr. Lefsih actually understood that when he was answering the not, the N-400 questions that being, a receipt of a ticket means you've been detained by law enforcement or cited by law enforcement. Nowhere did you hear that that person that interviewed him informed him of the same.

Moreover, these are like, hardly the type of offenses that should raise some sort of specter of danger. And there's no reason to believe that these misstatements were knowingly false.

Last I checked, the First Amendment is still in full force and effect. There's a posted video where -- that -- that the Government was their, was their first access point to Mr. Lefsih, or that's the testimony, this posted video of Sheikh Qaradawi, who, if you look him up on, you know, Wikipedia, there's certainly, he's written 120 books and he's an, an Egyptian Islamic theologian, okay? And so there's obviously -- the, the agent has testified that he's a known terrorist. There's no indication -- there's an indication that Mr. Lefsih found that video somewhere, potentially available on the Internet, we assume, and posted it and said, "Sheikh Qaradawi on jihad in Syria," you know. Hillary Clinton on Benghazi, like it means nothing to post that video with that comment. He didn't purport to be part of that. They want to make a lot of the fact that he removed that video. And there's probably a whole host of explanations for why someone would remove that video post Paris, right? You don't want to be associated with anything like that.

You'll see in some of the things that I submitted, those exhibits, his Facebook is replete with political speech, replete, everything from Trump and how he feels about Muslims, to Hillary Clinton, to Lindsey Graham, to children missing limbs, to Palestine, to Israel. He engages in political speech on his Facebook page, but he also says things -- and the agent agreed to having read some of these, right -- that, "There's nothing Islamic in killing innocent people." They want to now say, well, this is all just self-serving, you know. He really does want to kill people. They want you to somehow conclude this and it's laughable that you, that they want you to conclude it based on what they've shown you today. They want you to conclude because he has a conversation about not writing anything down, that he's a terrorist or because he's looking for a wife and talks about martyrs, that that means he's a terrorist.

Your Honor, this is a young man that's hard working, been a full-time student. Any problem with his enrollment is by virtue of these agents and them, if there is a problem, which the agent's testifying that he heard that he's not allowed back, but the paper is missing that supposedly suggests such and the school is telling me he is eligible for re-enrollment. So whatever happened at that school is by direct, you know, is directly because of the agents coming there to interview him.

So he's a full-time student, faithful Muslim, and he should be released on his own recognizance with, so that he can work with his lawyer, Chris Locasio, so that he can come and prepare for however his case is going to proceed. But this Court also has a suitable third-party custodian in Mr. Berzane and that should provide the Court added confidence to any release plan, can restrict his, Mr. Lefsih's movement to the District, can take any passport, but I think it's already taken, to ensure that he doesn't get any other documents. They can -- this Court could release him under the condition that he not use any social media. This is someone that has wanted to serve in our country in the United States Navy. It says that on his Facebook account and who wishes to naturalize and now by virtue of his speech is under this microscope.

So, Your Honor, the Government wants you to believe that it's an indication that he's a danger to the community because he posted that photograph. I encourage you to look at that photograph. When it's posted in isolation without any commentary, without any proponing, proponent of it or opponent of it, it's just out there, Government says it means ISIS is a terror. Well, yeah, ISIS is a terror. That, that isn't a false statement. ISIS is powerful. Well, it has shown that it's been powerful. It doesn't mean that one's advocating ISIS atrocities.

The Government wants you to think that, wants to use his election to have a lawyer present upon interrogation by law enforcement as he's not being cooperative I ask this Court to completely disregard such a thing. Electing your right to have a lawyer present while you're being interrogated by DHS agents certainly can't be a basis for detention.

Your Honor, I'd submit to you there are conditions that can be set and you should set them.

Thank you.

THE COURT: Thank you.

Mr. Goulian, do you wish to add anything.

MR. GOULIAN: Yeah.

Your Honor, I, I don't think Ms. Dominguez's argument fairly characterizes the Government's position. I just want to make crystal clear what we're saying.

As to danger to the community, the Government is not saying based on the evidence that we have that Mr. Lefsih's a terrorist. What we are saying is that he is certainly enabling. With -- through the, the limited information we have about what was on his social media, he is enabling the message of ISIS, a terrorist message by posting that picture, by posting a video of, of someone advocating violent jihad in Syria.

But again, the primary basis for detention here, the Government's submitting, is risk of flight. I've summarized that, the arguments that support that, Your Honor.

Thank you.

THE COURT: All right. Thank you.

All right. I have considered the testimony of the witnesses today, Agent Bell and Mr. Berzane. I've considered the information contained in the Pretrial report prepared by the United States Probation Office, as well as the Government's exhibits and defendant's exhibits, and I've considered the arguments of counsel made in connection with these proceedings.

As I said, pursuant to 18 United States Code, Section 3142, the Government must prove by a preponderance of the evidence that the defendant presents an actual risk of flight and that there are no conditions of release that would reasonably assure his appearance or by clear and convincing evidence that the defendant is a danger to another person or to the community, in general. I have considered the factors set forth in 18 United States Code, Section 3142(g), including the nature and circumstances of the offense charged, the weight of the evidence, of the Government's evidence, and defendant's history and characteristics, as well as the nature and seriousness of the danger to any person or to the community.

I appreciate Mr. Berzane's willingness to come forward as a third-party custodian in this case, but I do not find that that would be a suitable release plan, given his schedule and the relationship or their prior relationship as roommates being, essentially, only two to three months.

I find based upon all of the evidence that has been presented that the Government has shown by a preponderance of the evidence that the defendant presents a serious risk of flight. I base that upon the defendant's lack of familial, residential, community ties, or ties to the community based upon his ties to a foreign country, the lack of a suitable release plan in this case, his lack of truthfulness both in, with regard to the offense conduct that has been alleged as well as with investigators in this matter and with this court.

I also base the risk of flight, or one of the factors that I've considered and find that bear upon the, my finding of serious of flight are the immigration consequences in this case and the fact that a result, a, a conviction -- well, the immigration consequences both as a result of the Government's investigation in this matter, but also upon conviction if he is, in fact, convicted, as well as I have factored in my determination the Government's evidence of possible ties to or support of terrorist activity.

Based upon those findings, I have determined that the Government has shown by a preponderance that he does pose a serious risk of flight and that there are no conditions of release that would reasonably assure his appearance.

I do not make any findings one way or the other with regard to danger in this matter, but based upon the court's findings, I order that he be detained pending further proceedings in this case.

Anything further on behalf of the Government, Mr. Goulian?

MR. GOULIAN: No, Your Honor.

THE COURT: Anything further on behalf of your client, Ms. Dominguez?

MS. DOMINGUEZ: No, Your Honor.

THE COURT: all right.

Sir, I'm going to detain you. I'm going to remand you back into the custody of the United States Marshals pending further proceedings in your case.

And I wish you good luck, sir.

All right. Court's going to be in recess until 2:00.

COURT SECURITY OFFICER: All rise. Court will be in recess until 2:00 p.m.

(Proceedings concluded at 1:13 p.m.)

CERTIFICATE OF TRANSCRIBER

I, Janice Russell, court-approved transcriber, in and for the United States District Court for the Eastern District of North Carolina, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 5th day of April, 2016.

/s/ *JANICE RUSSELL*
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